IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8697 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JOHAR @ JORAVAR HUSEIN ISMAIBHAI SANDHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

Mr.Uday Bhatt AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 23/11/2000

ORAL JUDGEMENT

#. The detention order dated 18.7.2000 passed under the Gujarat Prevention of Anti Social Activities Act (PASA Act for short) passed by the Police Commissioner, Ahmedabad City, Ahmedabad in exercise of the powers under section 3(1) of the PASA Act against the petitioner has

been challenged by the petitioner in this Special Civil Application under Article 226 of the Constitution of India. The petitioner is in actual detention from 18.7.2000 in pursuance of the said order. The facts reveal that in all 4 crimes under sections 66(1)(b) and 66(e) and 81 are registered against the petitioner before Gomtipur Police Station from 25.5.2000 to 15.7.2000. The detaining authority took into consideration the papers of the investigation and statements of two witnesses who on assurance of anonymity ventured to offer statements against the petitioner before the police to the extent that the petitioner was hardened criminal and has created havoc amongst the general public and is still dealing in selling of illegal liquor. From the above facts the detaining authority came to the conclusion that the petitioner was a bootlegger within the meaning of section 2(b) of the PASA Act and hence the order of detention came to be passed.

#. Learned advocate Mr. A.S.Dave for the petitioner and learned AGP Mr. Uday Bhatt for the respondents were heard.

#. The detention order came to be challenged on various grounds. On scrutiny of record and from the rival contention, it glaringly emerges that the detention order is required to be set aside on the following two grounds.

(i) The detaining authority failed to consider less drastic remedy available to the detaining authority. This Court in Zubedabibi Rasidkhan Pathan vs. State of Gujarat reported in 1995 (2) GLR 1134 established that the detaining authority was required to consider less drastic remedy. The court further observed that cancellation of bail under section 437(5) Cr.P.C. was the less drastic remedy which was not resorted to by the detaining authority. The detaining authority has instead of resorting to said remedy stated that the procedure for cancellation of bail was likely to take time and was therefore in effective to prevent the illegal activities of the petitioner which is required to be prevented forthwith. This appears to be clearly non application of mind qua fact of the case because the provision under section 437(5) Cr.P.C. are of wider importance and intent were not properly considered by the detaining authority.

(ii) The detaining authority further failed to supply some statements recorded by the

investigating officer under section 161 Cr.P.C. in the crime registered against the petitioner.

The detaining authority, as per the order of detention has clearly relied upon those statements which is evident from the first page of the order. Copies of the said statements were asked for by the petitioner vide his representation dated 26.7.2000 referring to the detaining authority who in turn forwarded this representation to Government. However, while rejecting the representation, copies were not supplied and therefore, valuable rights of the petitioner under Article 22(5) of the Constitution of India was violated.

#. In this view of the matter. for the above mentioned two reasons, the order impugned is required to be set aside and therefore, other grounds urged on behalf of the petitioner have not been dealt with.

#. In the result the detention order dated 18.7.2000 passed by the Police Commissioner, Ahmedabad City, Ahmedabad against the petitioner is hereby ordered to be quashed and set aside. The petitioner-Johar @ Joravar Husein Ismaibhai Sandhi (Musalman) is ordered to be set at liberty forth if he is not required to be detained for any other purposes. Rule is made absolute.

(J.R.Vora.J)

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